IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 5213 of 2003(U)

PETITIONER:

HARIJAN VANITHA KAITHARI NAITHU
THOZHILALI VYAVASAYA SAHAKARANA SANGHAM
LTD.NO.H.L.INDUSTRIES M5,
P.O. KERALADHEESWARAPURAM, VIA. THANALUR,
MALAPPURAM-676 307, REPRESENTED BY ITS
SECRETARY.

BY ADV. SRI.P.V.SURENDRANATH
SRI.P.P.SUDHEER

RESPONDENTS:
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1. P. VENUGOPALAN, TEACHER'S LODGE,
NEAR SMUP SCHOOL, POST KERALADEEWARAPURAM,
THANALUR, MALAPPURAM DISTRICT.

2. INDUSTRIAL TRIBUNAL, PALAKKAD.

BY ADV. SRI.K.K.MOHAMED RAVUF

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.9163/2003 IN OP. NO.5213/2003

DISMISSED

22/06/2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ENQUIRY REPORT SUBMITTED BY THE ENQUIRY OFFICER.

EXT.P2:- COPY OF THE ORDER OF THE DISCIPLINARY SUB COMMITTEE DT. 23.6.98.

EXT.P3:- COPY OF THE STATEMENT FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE PRELIMINARY ORDER IN I.D. 92/99 DT. 11.1.01.

EXT.P5:- COPY OF THE DOCUMENT LIST BEFORE THE ENQUIRY OFFICER DT. 19.5.98.

EXT.P6:- COPY OF THE AWARD DT. 13.6.01 PASSED BY THE 2ND RESPONDENT AND PUBLISHED IN KERALA GAZETTE DT. 21.7.01.

EXT.P7:- COPY OF THE AFFIDAVIT ATTACHED OT THE PETITION DT. 20.12.01 FILED BEFORE THE 2ND RESPONDENT.

EXT.P8:- COPY OF THE AFFIDAVIT ATTACHED TO THE PETITION TO CONDONE THE DELAY IN SETTING ASIDE THE EXPARTE AWARD.

EXT.P9:- COPY OF THE ORDER IN MP. NO.41/02 IN ID. 92/99 PASSED BY THE 2ND RESPONDENT.

/TRUE COPY/

tss

T.R. Ramachandran Nair, J.

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O.P.NO.5213 of 2003-U

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Dated this the 22nd day of June, 2007

JUDGMENT

The management in an industrial dispute is the petitioner. The challenge is against the award Ext.P6 in I.D. No.92/1999. The first respondent is the workman. Disciplinary proceedings were taken against him which ended in his dismissal with effect from 6.6.1998. The matter was referred for adjudication and as per the preliminary order Ext.P4, the Industrial Tribunal found that the domestic enquiry conducted is in violation of the principles of natural justice and accordingly set aside the same. Thereafter, the management was allowed to adduce evidence before the Tribunal.

2. The Industrial Tribunal finally pronounced the award after finding that the management did not avail the opportunity to adduce evidence. The workman was examined as WW.1 and he was not cross examined by the management. A reading of the award shows that the case was posted for evidence of the management on 25.1.2001, 8.2.2001, 23.2.2001 and 23.3.2001 and thereafter the workman was examined on 17.5.2001 and the matter was finally posted on 31.5.2001 for hearing arguments. It appears

that on that day counsel for the management reported that he has no instructions and accordingly the award was passed. As per the award, the dismissal was held unjustifiable and it was held that he is entitled to be reinstated in service with continuity of service and backwages.

3. Seeking to set aside the ex-parte award, the management approached the Tribunal by Exts.P7 and P8. Ext.P8 is the affidavit filed by the Secretary of the Co-operative Society. The reasons for non-appearance have been stated in detail in Ext.P8. It was stated that the Secretary himself was personally in charge of the matter and consequent on the death of his father and also because of the treatment of his son in the Medical College for a pretty long time, he could not give instructions to the counsel for the management in time and that was the reason for their non-appearance. After hearing parties, by Ext.P9 the Tribunal refused to set aside the award. Exts.P6 and P9 are under challenge in this original petition.

4. Heard counsel for the parties. This is a case where the domestic enquiry was set aside by the Tribunal by the preliminary order and as requested by the management in the written statement, the matter was being posted for their evidence. It has come out from the pleadings that the only employee was the Secretary and he was in charge of the case. Because of certain personal reasons he could not contact the counsel in time, even though the Tribunal was not prepared to accept the said reason.

5. But since the employee was dismissed from service and as there is a direction to reinstate him in service, it is only in the interest of justice that the management is allowed one more opportunity to sustain the punishment before the Tribunal by adducing evidence.

6. Learned counsel for the first respondent pointed out that the first respondent has not been paid the entire amount of subsistence allowance by the management. It is obligatory on the part of the management to pay subsistence allowance going by Rule 196 of the Kerala Co-operative Societies Rules. Therefore, he prays for a direction to the petitioner to pay the admissible and eligible amount of subsistence allowance within a time limit.

7. Therefore, Exts.P6 and P9 will stand set aside and the petitioner will be allowed to adduce evidence before the Tribunal. The petitioner is directed to pay the due and eligible subsistence allowance to the first respondent by it, within a period of two months and evidence of such payment will be produced before the Tribunal. The Industrial Tribunal will expedite the proceedings in the matter.

The Original Petition is disposed of in the above terms.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.5213 of 2003-U

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JUDGMENT

22nd day of June, 2007